Haji Awalludin bin Anidin v Majlis Perbandaran Kuantan

SUPREME COURT (KUANTAN) — CIVIL APPEAL NO 04–11 OF 1993
ANUAR CJ (MALAYA), PEH SWEE CHIN AND WAN ADNAN FCJJ
8 JUNE 1995

Public Authorities *— Tort — Trespass to goods — Issuing of notice requiring payment of arrears of assessment due — No payment received — Issuing of warrant of attachment — Seizure of plaintiff occupier's goods — Payment subsequently made by owner of premises — Whether plaintiff liable to pay arrears due — Whether seizure of plaintiff's goods amounted to trespass — Local Government Act 1976 s 148*

On 26 April 1989, Majlis Perbandaran Kuantan ('the respondent') issued a notice in Form E pursuant to s 148 of the Local Government Act 1976 ('the Act') to one Chua Ong Kiat ('Chua'), who was the owner on record of premises No 57, Lorong Lengkok Kiri 3, Taman Putih Baru, Kuantan ('the premises'), requiring him to pay up arrears of assessment due within 15 days. Since no payment was received within the stipulated time, the respondent issued a warrant of attachment in Form F to be executed by its officials pursuant to the power under s 148 of the Act. On 26 May 1989, the respondent's officials went to the premises. They met the occupier of the premises ('the appellant') who claimed that he had bought the premises from Chua. The appellant's solicitors later confirmed with the respondent's officials that the premises were in fact sold to the plaintiff on 14 November 1988, although Form I had not yet been lodged with the respondent. As the appellant refused to discuss the matter further with the respondent, the respondent's officials proceeded with the attachment. A cassette recorder and a television set belonging to the appellant were removed. On 29 May 1989, Chua paid to the respondent the arrears due. On 2 June 1989, the goods were brought back to the premises. The plaintiff contended that the seizure of the goods amounted to trespass, as he was not liable to pay the arrears. The sessions court judge allowed the appellant's claim on the appellant's application under O 26A of the Subordinate Court Rules 1980. However, the judge at the High Court, on an appeal by the respondent, set aside the sessions judge's order. The appellant appealed.

Held, dismissing the appeal:

(1) Since the appellant's claim was based on trespass, the issue was whether the respondent had the power to seize the appellant's goods (see p 61H); *Dewan Bandaraya Kuala Lumpur v Suppiah s/o Govindasamy* [1991] 1 CLJ 429 distinguished.

(2) It is clear from s 148 of the Act that any moveable property found in the premises in respect of which arrears of assessment are due is liable to seizure (see 61E–F).

(3) In this case, as there was compliance with the provisions of s 148 of the Act by the defendant, the seizure was not unlawful. It follows that there could not have been any trespass (see 61H–I).

[Bahasa Malaysia summary

Pada 26 April 1989, Majlis Perbandaran Kuantan ('penentang') telah mengeluarkan suatu notis dalam Borang E mengikut s 148 Akta Kerajaan Tempatan 1976 ('Akta tersebut') kepada seorang yang bernama Chua Ong Kiat ('Chua'), yang merupakan pemunya premis No 57, Lorong Lengkok Kiri 3, Taman Putih Baru, Kuantan ('premis tersebut'), yang menghendakinya membayar tunggakan taksiran yang perlu dibayar dalam tempoh 15 hari. Oleh kerana bayaran tidak diterima dalam tempoh yang dinyatakan itu, penentang pun mengeluarkan satu waran penahanan untuk dilaksanakan oleh pegawainya, menurut kuasa di bawah s 148 Akta tersebut. Pada 26 Mei 1989, pegawai penentang pergi ke premis tersebut. Mereka menemui penghuni premis tersebut ('perayu') yang mendakwa bahawa dia telah membeli premis itu daripada Chua. Peguam perayu kemudiannya mengesahkan dengan pegawai penentang bahawa premis tersebut telah dijual kepada perayu pada 14 November 1988, walaupun Borang I masih belum dikemukakan kepada penentang. Oleh kerana perayu enggan membincangkan perkara itu dengan selanjutnya dengan penentang, pegawai penentang pun meneruskan penahanan itu. Sebuah perakam keset dan sebuah televisyen kepunyaan plaintif telah dipindahkan. Pada 29 Mei 1989, Chua telah membayar tunggakan yang perlu dibayar kepada penentang. Pada 2 Jun 1989, barangan yang telah dipindahkan itu telah dibawa balik ke premis tersebut. Perayu berhujah bahawa penahanan barangan itu merupakan satu pencerobohan, kerana dia tidak bertanggungan untuk membayar tunggakan yang berkenaan. Hakim mahkamah sesyen membenarkan tuntutan perayu atas permohonan perayu di bawah A 26 Kaedah-Kaedah Mahkamah Rendah 1980. Walau bagaimanapun, hakim Mahkamah Tinggi, atas rayuan penentang, mengenepikan perintah hakim mahkamah sesyen tersebut. Perayu merayu.

Diputuskan, menolak rayuan itu:

(1) Oleh kerana tuntutan yang dibuat oleh perayu adalah berdasarkan kepada pencerobohan, isunya adalah sama ada penentang mempunyai kuasa untuk menahan barangan perayu (lihat p 61H); *Dewan Bandaraya Kuala Lumpur v Suppiah s/o Govindasamy* [1991] 1 CLJ 429 dibeza.

(2) Adalah jelas daripada s 148 Akta tersebut bahawa sebarang harta alih yang dijumpai dalam premis di mana tunggakan taksiran perlu dibayar boleh ditahan (see 61E–F).

(3) Dalam kes ini, oleh kerana terdapat pematuhan peruntukan s 148 Akta tersebut oleh penentang, penahanan itu adalah sah di sisi undang-undang. Oleh itu, tidak mungkin bahawa sebarang pencerobohan telah berlaku (see 61H–I).

Notes

For cases on tort committed by local authorities, see 10 Mallal's Digest (4th Ed, 1996 Reissue) paras 1434–1452.

Case referred to

Dewan Bandaraya Kuala Lumpur v Suppiah s/o Govindasamy [1991] 1 CLJ 429

Legislation referred to

Local Government Act 1976 s 148

Appeal from: Civil Appeal No 12–4–1991 (High Court, Kuantan)

Mura Raju (*Mura Raju & Co*) for the appellant.
Jaya Ramachandran (*Balendran Chong Bodi & Khatijah*) for the respondent.

Wan Adnan FCJ: The plaintiff's claim against the defendant is for damages for trespass alleged to have been committed by the defendant's servants or agents on 27 May 1989, in removing from the premises No 57, Lorong Lengkok Kiri 3, Taman Tanah Putih Baru, Kuantan ('the said premises'), one Sanyo cassette recorder and one Sanyo 24-inch television set belonging to the plaintiff ('the said goods').

The learned sessions court judge allowed the plaintiff's claim on the plaintiff's application under O 26A of the Subordinate Court Rules 1980. However, the learned judge at the Kuantan High Court on an appeal by the defendant set aside the sessions judge's order; hence the appeal to us. We heard the plaintiff's appeal against the learned judge's decision and we dismissed it. We now give our reasons.

The facts are not in dispute.

On 26 April 1989, the defendant issued the notice in Form E pursuant to s 148 of the Local Government Act 1976 ('the Act') to one Chua Ong Kiat, being the owner on record of the said premises, requiring payment of arrears of assessment due in respect of the said premises and giving him 15 days within which to pay up. The notice was sent to the address of No A-4894, Galing Kecil, 25250 Kuantan, being the address of the said owner still on the defendant's record. Since no payment was received within the stipulated times, the defendant, pursuant to the power under s 148 of the Act issued a warrant of attachment in Form F for its execution to its officer, Mohd Saat bin Abdul. Accordingly, on 26 May 1989, the officials of defendant went to the said premises. They met the plaintiff, the occupier of the said premises. The plaintiff told them that he had bought the said premises from Chua Ong Kiat and requested them to see the solicitors, Messrs Bahari, Choy & Nongchik, who had handled the sale transaction. Hence, on the morning of 27 May 1989, the officials checked with the solicitors and was informed that the said premises were sold to the plaintiff on 14 November 1988, and that Form I had not yet been lodged with the defendant. As the plaintiff refused to discuss the

matter further with the defendant, the officials of the defendant proceeded with the attachment.

On 29 May 1989, the said Chua Ong Kiat paid to the defendant the arrears amounting to RM2,195.27. On 2 June 1989, the said goods were brought back to the said premises but the plaintiff's wife refused to accept them. The plaintiff accepted them on 10 June 1989.

It was only on 2 June 1989 that the defendant received Form I pursuant to s 160 of the Act, being a notice of transfer of a rateable holding.

Sections 146 and 148 of the Act provide as follows:

> 146 Rates to be first charge.
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> All rates shall be paid by the persons who are the owners of the holdings for the time being, and until so paid shall, subject to the provisions of the National Land Code, be a first charge on the holdings in respect of which they are assessed, and if not paid within the prescribed time, shall be recoverable in the manner hereinafter prescribed.
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> 148 Proceedings for recovery of an arrear.
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> (1) For the recovery of an arrear the local authority may issue a warrant of attachment in Form F of the First Schedule hereto and may seize by virtue thereof any movable property, belonging to the owner or occupier liable to pay the same, which is found within the local authority area and may also seize any movable property, to whomsoever belonging, which is found on the holding in respect of which the arrear is due:
>
> Provided that no warrant of attachment shall be issued by the local authority unless it has served a notice, in Form E of the First Schedule hereto, posted or delivered to the owner or any one of the owners, if more than one, at the last known address, calling on him to pay the arrear within fifteen days of the posting or delivery.
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> (2) The warrant shall be executed by an officer of the local authority who shall make an inventory of the property attached thereunder, and shall at the same time give notice in Form G of the First Schedule hereto, to the person in possession of the property at the time of attachment:
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> Provided that where in the opinion of the officer executing the warrant the value of the movable property to be attached is of a lesser value than the arrear to be recovered or there is no movable property to be attached as in the case of a holding which is vacant or unoccupied no such inventory need be made and in such a case he shall affix a notice in Form H of the First Schedule hereto on some conspicuous part of the holding or any one of the holdings in respect of which the arrear is due to the effect that procedure for the recovery shall be instituted under section 151.
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> (3) Such officer may break open in the daytime any house or building for the purpose of effecting such attachment.
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> (4) The fee for a warrant of attachment shall be of such amount as the local authority may fix from time to time and shall be costs of the attachment.

It is not disputed that there were arrears of the assessment in respect of the said premises as at 26 April 1989. As at that date, the owner of the said premises on the defendant's record was one Chua Ong Kiat of No A4894

A Galing Kecil, Kuantan. Therefore, it was proper for the defendant to issue the notice in Form E to him. Since no payment was received within the stipulated time of 15 days, it was again proper for the defendant to issue the warrant of attachment in Form F. The relevant part of the Form F reads as follows:

B > This is to command you to attach *the movable property of the said owner/ occupier wherever the same may be found within the said Majlis Perbandaran Kuantan and also any movable property to whomsoever belonging which is found on the holding 57, Lorong Lengkok Kiri 3,* Taman Tanah Putih Baru, 25150 Kuantan and unless the said sum ... (Emphasis added.)

C These words follow the wordings of s 148. What may be seized under the warrant are:

(i) movable property *belonging* to the owner or occupier liable to pay the same *which is found anywhere within the area of Majlis Perbandaran Kuantan*; and

D (ii) movable property which is *found in the said premises to whomsoever belonging.*

Whereas under (i) the movable property liable to seizure must belong to the owner or occupier liable to pay the arrear, the seizable movable property found in the said premises need not belong to the owner or E occupier.

It is clear from s 148 that any movable property found in the premises in respect of which arrears of assessment are due is liable to seizure. The question of ownership of such movable property is immaterial at this stage. Thus, any movable property even belonging to a tenant or a lodger in any F such premises will also be liable to seizure.

The plaintiff contended that he was not liable to pay the arrears. Therefore, the seizure of the said goods amounted to a trespass. The learned counsel relied solely on the case of *Dewan Bandaraya Kuala Lumpur v Suppiah s/o Govindasamy* [1991] 1 CLJ 429. In that case, the claim was for the return of goods under s 154 of the Act and not for G damages for trespass or wrongful attachment. The case centred on the interpretation of 'the owners of the holdings for the time being' in s 146 and the issue of who was liable to pay under s 160. In that case, s 148 was not considered at all. In the instant case the claim is based on trespass. What is to be considered is whether or not the defendant had the power to H seize the plaintiff's goods.

As we have said earlier, there was compliance with the provisions of s 148 by the defendant. The seizure was not unlawful. Therefore, there could not be any trespass.

We therefore dismissed the appeal.

I *Appeal dismissed.*

Reported by Mariette Peters-Goh